In the High Court of Punjab and Haryana at Chandigarh

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C.W.P. No.17697 of 2004

.....

Date of decision:10.1.2007

Sunil Dutt and another

.....Petitioners

v.

State of Punjab and others

.....Respondents

....

Coram: Hon'ble Mr. Justice S.S. Nijjar
Hon'ble Mr. Justice S.S. Saron

Present: Mr. Parveen Kumar Garg, Advocate for the petitioners.

Mrs. Charu Tuli, Senior Deputy Advocate General, Punjab.

Mr. Ashok Aggarwal, Senior Advocate with Mr. H.N.S. Gill and Ms. Deepali Puri, Advocates for respondent No.5.

Mr. Puneet Bali, Advocate for respondent No.6.

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S.S. Nijjar, J. (Oral):

This writ petition has been filed under Article 226 of the Constitution of India with a prayer that the writ petition be treated as public interest litigation. The petitioners seek the issuance of writ in the nature of certiorari quashing the order dated 29.10.2004 (Annexure-P.5) by which respondent No.6 had been reinstated in service pending inquiry against him.

The grievance made by the petitioners is as follows:-

"2. That this is the Public Interest Litigation highlighting the

scandal of theft/embezzlement/fraud of food grain, wheat, rice, Insecticides, Bardana (Gunnies), wooden crates, polythene tarpaulins and sheets etc. worth Billions of Rs. in the custody of PUNSUP with prayer, to order the registration of criminal case against Sher Singh, Regional Manager-cum-District Manager, Punjab State Civil Supplies Corporation Ltd. (PUNSUP), Sangrur in connivance with Albel Singh, Field Officer, Kashmira Singh, Inspector, PUNSUP Office, Barnala and further for thorough investigation/inquiry in the matter and to entrust the said investigation to some independent agency like CBI with further directions to complete the said investigation in the short stipulated time and to take other necessary actions. However, as the petitioners are apprehending that respondent No.5 being in connivance with Sher Singh and is helping him by misusing his official position and will not allow the fair enquiry in the matter, and even otherwise also, whose appointment is in contravention of the conventions and customs of the PUNSUP, petitioners are also seeking removal of the respondent No.5 from his office, in the public interest.

4. That in brief, facts of the case are that PUNSUP is a autonomous body, came into existence on 14.2.1974 and the main object of setting up PUNSUP, the respondent No.3, as is enunciated in the Memorandum of Association of the PUNSUP, is to procure such items of daily necessity which are considered to be essential for the common man and to arrange

their distribution to the consumers in the State either through the existing network of fair price shops and consumers co-operative stores or by opening its own distribution stores. The PUNSUP is also involved in procurement of food grains and other commodities for the Central Pool and also for and on behalf of State Government as well as on behalf of Food Corporation of India. Here a reference may be made to the review of PUNSUP working by the Secretary-Manager Finance, PUNSEED, Chandigarh in the year 1989. As per the review report, mentioned above, the functions of the PUNSUP department may be summarized in the following heads.

a. To undertake trade, purchase, storage, movements including interstate movement, distribution and sale of food grains and other foods stuffs.

b. To undertake, promote or participate in production, manufacturing, storage and processing of food grains and other food stuffs.

c. To plan, promote, set-up or a phased in promoting over setting up rice mills, flour mills, oil mills, including vanaspati or such other undertakings which may help in the processing of food grains and other foodstuffs.

d. To plan, undertake, promote, set up for participate in setting up of food-based industries.

e. To undertake procurement, import, supplies and distribution of such essential commodities as identified

government from time to time.

f. To take such other arrangements so as to show the availability of essential commodities in the market at reasonable rates, as may be deemed necessary.

g. To undertake and promote trade in any commodity which may be considered feasible commercially or which may be considered necessary to either maintain the line of supplies of to maintain prices in the market.

h. To trade or carry on business in other kind of merchandise and for that purpose, and sell all kinds of goods included in this category.

i. To purchase, set up, maintain and run agricultural trade, poultry farms, dairy farm and such other undertakings of this nature and description which can be utilized for production of any foodstuffs or their allied products and to store and sell the produce therefrom.

The PUNSUP has ceased to perform all the functions given to it, except procurement of wheat for the central pool and procurement of paddy under the same scheme. The reduction has been due to change of policy of the government of India Punjab government/control of sugar, cement and other essential commodities has been relaxed and these products are being sold in the market freely without any control of the State. The main business of the PUNSUP is procurement of food-grains for the Central pool."

The petitioners claim to be social spirited citizens of India having no personal interest in the matter. The writ petition, according to them, has been filed with a motive to safeguard the property of the PUNSUP which is a Punjab Government undertaking. Respondent No.5 is the Managing Director of the PUNSUP whereas Sher Singh (respondent No.6) is the Regional Manager of PUNSUP. According to the petitioners, respondent No.5 has entrusted the charge of the most lucrative area of Punjab to respondent No.6. It is stated that the affairs of PUNSUP are being totally mismanaged. The Managing Director was appointed at the whims of the Chief Minister. The Government merely issues orders of appointment on the decision taken by the Chief Minister. It is categorically stated that one has to be very close and near to the Chief Minister to be appointed as the Managing Director of the PUNSUP. In the present case also, it is stated that respondent No.5 is very well known to the Chief Minister and has good and close family relations with the Chief Minister. It is further stated that Sher Singh (respondent No.6) is also closely known to respondent No.5 and has been protected by respondent No.5 by going out of way and the rules. Information with regard to the misappropriation of wheat by respondent No.6 was sent to the Superintendent of Police, Barnala. Similarly, some public spirited persons also sent information to the Chief Minister of Punjab. The letters were sent on 7.1.2004 and 23.2.2004 respectively. The Deputy Principal Secretary to the Chief Minister, Punjab took notice of the matter and marked the same to ADGP (Vigilance) for inquiry. After inquiry, no criminal case was registered against any of the culprits. It is also stated that the whole inquiry by the Vigilance Department is only an eye-

wash. Number of public spirited persons met with the Vigilance authorities in this regard, but to no avail. Thereafter, the petitioners state that the Vigilance Bureau, which was set-up specifically to check unscrupulous and illegal activities of the public servants and to prevent the spread of corruption has miserably failed in its statutory duty. Taking note of these illegalities, respondent No.5 actually suspended respondent No.6 on 21.6.2004. It is stated that the petitioners have come to know that respondent No.6 has been reinstated in service in spite of the fact that he has committed loss of Rs.7,09,45,474/-. This loss has been caused due to connivance of respondents No.5 and 6. The following questions of law have been framed in paragraph 23 of the writ petition:-

> "a. Whether present case requires investigation from independent agency like CBI.
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> b. Whether prima facie criminal case is made out against the real culprit officers/officials.
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> c. Whether act of the respondent No.5 in reinstating Sher Singh is justified and is in accordance with and if not, whether impugned order dated 29.10.2004, Annexure-P.5 is liable to be set aside.
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> d. Whether appointment of respondent is in contravention of the conventions and customs of the PUNSUP.
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> e. Whether petitioner is entitled to the relief as prayed for."

All the respondents have filed detailed written statements. In preliminary objection No.2, respondent No.5 has categorically stated that it is a settled proposition of law that the concept of PIL was devised to help

the judiciary in extending its long arm of sympathy to the poor, ignorant, oppressed and the needy. Its abuse and unregulated use would make it a tool for seeking vendetta by persons meddling with the judicial process for improper motive or a bargain for a good deal including enriching themselves. It is further stated that the present public interest litigation is an abuse of the process of law. Thereafter, the written statement sets out in detail the functioning of PUNSUP. The reply is accompanied by the relevant documents. Respondent No.6 has again taken similar objections. It is specifically stated that the writ petition is full of generalizations. The petitioners knowingly, wilfully and intentionally have not disclosed as to in what manner they have gathered all the information. The petitioners, thereafter filed a replication.

This writ petition has been pending in this Court since 5.11.2004. The respondents have all engaged Advocates. Respondent No.5 has in fact engaged Mr. Ashok Aggarwal, Senior Advocate. The pleadings are complete. Before the matter could be taken up for hearing on merits, learned counsel for the petitioners has made a request that he may be permitted to withdraw this public interest litigation. On being asked the reason for withdrawing the writ petition after a period of two years, counsel for the petitioners submitted that in view of the written statements filed by the respondents, the writ petition may be permitted to be withdrawn. The Court, however, was not inclined to allow the prayer made at such a late stage. Pendency of this writ petition for the last two years at motion stage had consumed precious judicial time of this Court which could be utilized to contain the increase in the number of cases which are already pending in

this Court. After the Court had expressed its opinion that the petition can be permitted to withdraw on payment of very heavy costs, the counsel for the petitioners has submitted that he may be permitted to argue the matter on merits. We fail to see how the learned counsel for the petitioners would have anything to argue on merits in view of the statement earlier made that the petition may be permitted to be withdrawn in view of the written statements filed by the respondents. In our opinion, the prayer for arguing the writ petition on merits has been made only to avoid payment of the costs for the wastage of judicial time. The defence of the writ petition has also entailed wastage of time of public servants as well as public funds in seeking legal representation to defend the writ petition. A perusal of the writ petition clearly discloses that it is full of generalizations. No material has been placed on the record in support of any of the averments made. The petitioners were unable to give details of the close or family ties of respondent No.5 with the Chief Minister of Punjab. No details are given as to the misfeasance or malpractice which may have been committed by respondents No.5 and 6. No details are given as to how the petitioners are socially spirited persons. The petitioners have failed to disclose any other causes which might have been espoused by the petitioners in public interest.

Mr. Aggarwal has submitted that the writ petition seems to have been motivated by the reinstatement of respondent No.6 by respondent No.5. Learned counsel further submits that in any event a public interest litigation would not be maintainable in service matters. The writ petition is in fact aimed against the reinstatement of respondent No.6 and has been disguised as public interest litigation by even seeking the removal of

respondent No.5. Mr. Puneet Bali appearing for respondent No.6 has brought to our notice the judgment of the Supreme Court in the case of Dr. B. Singh v. Union of India and others, (2004) 3 SCC 363 and submitted that a public interest litigation would not be even maintainable in service matters. He has specifically placed reliance on the observations made by the Supreme Court in paragraph 16 of the judgment, which are as under:-

> "As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations, whereas only a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts at times are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in *Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra, (1998) 7 SCC 273* this Court held that in service matters PILs should not be entertained, the inflow of the so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. This tendency is being slowly permitted to percolate for setting in motion criminal law jurisdiction, often unjustifiably just for gaining

publicity and giving adverse publicity to their opponents. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Apart from the sinister manner, if any, of getting such copies, the real brain or force behind such cases would get exposed to find out whether it was a bona fide venture. Whenever such frivolous pleas are taken to explain possession, the court should do well not only to dismiss the petitions but also to impose exemplary costs, as it prima facie gives impression about oblique motives involved, and in most cases shows proxy litigation. Where the petitioner has not even a remote link with the issues involved, it becomes imperative for the court to lift the veil and uncover the real purpose of the petition and the real person behind it. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforestated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts."

It is a settled proposition of law that the concept of public interest litigation was developed by the Supreme Court to undo and eradicate injustice for and on behalf of the poor, handicapped and incapacitated

segment of the population of India. It was not developed to permit busybodies and dubious minded persons to wreck vendetta on their rivals or their actual or imaginary enemies.

We are of the considered opinion that the present writ petition is a clear abuse of the process of Court. It has resulted in unnecessary wastage of precious judicial time. We are also of the opinion that the petitioners do not have any locus standi to file the present writ petition. The writ petition is also not maintainable in view of the law laid down by the Supreme Court in Dr. B. Singh's case (supra).

In such circumstances, we find no merit in this writ petition and dismiss the same. The facts and circumstances of this case are such that the petition deserves to be dismissed with heavy costs but keeping in view the future career of a young lawyer who is appearing in this case, we refrain from imposing any costs. Dismissed.

(S.S. Nijjar)
Judge

January 10, 2007.

(S.S. Saron)
Judge

hsp

Whether fit for indexing: Yes